

### REMARKS

Claims 1-2, 4-9, 11-17 and 19-25 are pending in this application. Claims 1, 8 and 16 are amended herein.

Claims 1, 8 and 16 remain independent.

Claims 1, 8 and 16 are amended herein solely for clarification and in the case of claim 1 to correct an obvious editorial error, and not for purposes of patentability. Accordingly, it is respectfully requested that this Supplemental Amendment be entered.

The rejection of claims 1-7 under 35 USC §101 and claims 1-22 under 35 USC §102(e) as anticipated by Randle, et al. (U.S. Patent No. 6,594,647 B1) are addressed in the Remarks filed with the original Supplemental Amendment filed on June 7, 2005, which in turn incorporates the remarks in the Amendment filed on March 14, 2005.

Finally, the Office Action rejected Claims 1-7 under 35 U.S.C. § 101 because the claimed invention was purportedly directed to non-statutory subject matter. In particular, the Examiner cites *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BdPaApp&Int 2001) for the proposition that 35 U.S.C. § 101 includes a “technological arts” test. Claims 1-7 allegedly did not satisfy this purported “technological arts” test. Notwithstanding the present amendments to the claims, Applicants respectfully submit that in view of *Ex parte Lundgren* and the USPTO’s new Guidelines for Subject Matter Eligibility, the Office Action’s rejections of Claims 1-7 under the purported “technological arts” test of 35 U.S.C. § 101 are now moot.

In particular, the Board of Patent Appeals and Interferences in *Ex parte Lundgren*, Appeal No. 2003-2088, Application 08/093,516, (Precedential BPAI opinion September 2005), expressly rejected the existence of this separate “technological arts” test relied upon by the Office Action. Indeed, after reviewing *In re Musgrave*, 431 F.2d 882, 167 USPQ 280 (CCPA 1970); *In re Toma*, and *Ex parte Bowman*, the Board of Patent Appeals and Interferences expressly stated in *Ex parte Lundgren*:

Our determination is that there is currently no judicially recognized separate “technological arts” test to determine patent eligible subject matter under § 101. We decline to propose to create one. Therefore, it is apparent that the examiner’s rejection can not be sustained. (see page 9)

As a result of *Ex parte Lundgren*, the USPTO issued new Guidelines for Subject Matter Eligibility on (see OG Notice of November 22, 2005, available at <http://www.uspto.gov/web/>

Applicant: Ganesan et al.  
Filed: December 28, 2000  
Application No.: 09/749,597

offices/com/sol/og/2005/week47/patgupa.htm). Indeed, the new Guidelines indicate that:


USPTO personnel should no longer rely on the technological arts test to determine whether a claimed invention is directed to statutory subject matter. There is no other recognized exceptions to eligible subject matter other than laws of nature, natural phenomena, and abstract ideas.

Accordingly, Applicants respectfully submit that in view of *Ex parte Lundgren* and the USPTO's new Guidelines for Subject Matter Eligibility, the Office Action's rejections of Claims 1-7 under 35 U.S.C. § 101 are now moot.

### CONCLUSION

The applicants believe they have responded to each matter raised by the Examiner. Allowance of the claims is respectfully solicited. It is not believed that extensions of time or fees for addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR §1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 19-5029.

Respectfully submitted,



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SAB Docket No.: 23952-0126